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EXAMINER

SIEPKE, SAMUEL P

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1743

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/366,441
Filing Date: August 03, 1999
Appellant(s): CAMPBELL ET AL.

Robert C. Kowert
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/16/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-15.

Claims 7-15 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-45 ^{have} been canceled.
^

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-5 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,783,740	Tawarayama et al.	7-1998
EP 0543544	Takashi	6-1992

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims **1-6** are rejected under 35 U.S.C. 102(b) as being anticipated by Tawarayama et al. (USPN 5,783,740).

Tawarayama discloses an analytical system for monitoring trace elements in a liquid sample. The apparatus comprises a first sample introduction unit (fig. 1, ref. 2 and 203; col. 4, lines 45-59), a second sample introduction unit (fig. 1, ref. 4 and 406; col. 5, lines 22-47); a sensor (fig. 1, ref. 7) configured to selectively (control unit (9)) receive a first and second sample flow wherein the sensor measures the concentration of a chemical interest (phosphorus and nitrogen) of each sample flow (fig. 2, col. 6, lines 56- col. 7, line 34). A control unit (8) controls all operations of this system, which include; constant flow rate (col. 3, lines 2-5); a purging system for cleaning the insides of the flow passage (col. 6, lines 1-6). (col. 3, lines 6-65).

Claims **1-5** are rejected under 35 U.S.C. 102(b) as being anticipated by Ep 0543544 ('544).

Ep 544 discloses an apparatus for analyzing a liquid specimen that comprises multiple chemical diluting fluid holding vessels (c1-c5); a sample valve (11) which allows for switching between sample dilution stages and sample analysis; a flow metering passage (page 2, lines 18-19); a control means for controlling all operations of the apparatus (page 3, lines 19-21); a purging line for cleaning the passages (page 3, lines 55-56); a detector (sensor) for analyzing a sample for mean red corpuscular hemoglobin

concentration (page 4, lines 40-54 ; claims 1-7); a work load setting for predetermined characteristics of a sample (page 5, lines 1-27).

Claims 7-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or fairly suggest sensor that measures a first sample attribute value for a first sample and a second sample attribute value for a second sample, then a control system configured to receive the attribute from first sample and the second sample and displays both on a display unit.

(11) Response to Argument

Applicant argues, "Tawarayama does not teach a sensor configured to **selectively receive** a first sample flow of a first chemical **mixture from a first chemical vessel** and to selectively receive a second sample flow of second chemical mixture from a second chemical vessel.... Tawarayam teaches how a sample from single source 202 is prepared for testing and then tested by a detection unit." Examiner is relying on 202 being the first sample, and the second sample is created in the second sample introduction unit, the decomposed sample is introduced in the second sample loop, thus creating a second sample out of the first sample. Applicant

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points out that the sample mixture is then heated and decomposed by thermostat 303 in pre-treatment unit 3 (col. 4, line 60 - col. 5, line 21). The sample mixture is then injected by the second sample introduction unit 4 into coloring unit 6 where it is mixed with coloring reagent 602 (col. 5, lines 22-52). Examiner recognizes there is only a single sample source as the Applicant is pointing out, but **two samples flows** and **two separate samples** (first chemical mixing vessel (sample loop 204), second chemical mixing vessel (second sample loop 412)) are created by one sample source. Examiner would also like to point out to col. 5, lines 5-7 "Meanwhile, another sample is similarly introduced into a suitable tube, for example the tube 311 in the thermostat 303 by switching the valves 301 and 302 to be decomposed by heating. In this way, other samples are sequentially introduced into the tubes 312 to 315 until the decomposition of the sample in the tube 310 is completed. Regarding the selectively receiving limitation, Tawarayama discloses that the sample can be either introduced into the detection unit or to a discharge (waste), this is selectively receiving a sample. Therefore Tawarayama teaches each limitation of claim 1.

Applicant argues, Tawarayama does not teach displaying the samples attributes. It is inherent that use of a colorimetric reaction is a type of display (optical result, absorbance) of the results from the phosphorus and nitrogen tests performed on the samples.

Applicant argues, EP 544 does not teach a sensor configured to selectively receive a first sample flow of a first chemical mixture from a first chemical vessel and to selectively receive a second sample flow of second chemical mixture from a second

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chemical vessel." The Office is relying on the metering of the flow of the sample fluids for the sensor limitation. Claim 1 of the instant application, only discloses a sensor, the function or specific analysis the sensor performs is not specified. So it is the claims is read to is broadest scope, and that includes measuring the flow of a sample (page 2, line 118-19). This was the Applicant's only disagreement on claim 1.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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December 13, 2004



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